



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 23, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2017OPA-0929

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Sustained
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Allegation Removed
# 4	5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Allegation Removed
Imposed Discipline		
Retired Prior to Proposed DAR – Discipline		

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employee was sarcastic, dismissive, and “lackadaisical” when she alleged that her son had been subjected to biased policing by unknown officers. the Complainant further alleged that the Named Employee failed to take any action on her complaint, including not reporting her allegation to OPA.

### **ADMINISTRATIVE NOTE:**

The Named Employee in this case retired from SPD during the pendency of this investigation. As such, he is no longer a member of a police union and the 180-day deadline that applies to SPOG and SPMA is inapplicable here. Given this, OPA administrative set the 180-day deadline as the date of this DCM.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***



The Complainant alleged that on August 9, 2017, she contacted the South Precinct to report a negative interaction that her son had with two SPD officers. Specifically, she contended that her son had been subjected to biased policing. She spoke to the on-duty officer at the South Precinct who, given the nature of her allegation and pursuant to policy, referred her to a Sergeant. According to the Complainant, the sergeant she spoke to was “lackadaisical” and sarcastic in response to her report of bias and did not properly report her allegation of bias-based policing to OPA. Allegedly, the Complainant relayed that the Sergeant expressed his doubts that it would be possible to identify the SPD employees with whom the Complainant’s son had a negative interaction and told her “good luck” in a manner she found dismissive. The Complainant subsequently made an OPA complaint on her own and this investigation ensued.

OPA’s investigation into the underlying bias claim resulted in an inconclusive finding. In reaching this determination, however, OPA noted that it found the Complainant and her son to have provided a credible account of what had occurred and that, if true, the behavior alleged on the part of the unknown SPD employees was extremely concerning and presented at least facial evidence of a policy violation.

In evaluating the Complainant’s allegation of misconduct on the part of the Sergeant she spoke with, the Complainant provided OPA with the name of the Sergeant who she believed had not properly handled her complaint. OPA determined that the initial Sergeant identified by the Complainant was not, in fact, the Sergeant in question. OPA further interviewed the duty officer at the South Precinct to conclusively determine which Sergeant the Complainant spoke to. The duty officer recalled his conversation with the Complainant and told OPA that he notified Named Employee #1 (NE#1), who then spoke with the Complainant. The duty officer indicated that, after referring the Complainant to NE#1, he did not hear the substance of the phone call.

Based on this information, OPA attempted to interview NE#1. However, NE#1, who had since retired from SPD, declined to be interviewed.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

As NE#1 declined to be interviewed and given the lack of any recordings, the Complainant’s allegations are the only evidence of the discussion between her and NE#1. OPA has no reason to doubt the veracity of her account and, as such and given the lack of contrary evidence, assumes her recounting of the incident to be accurate in evaluating NE#1’s conduct.

While the Complainant asserted that NE#1 was “lackadaisical” during their conversation and in handling her complaint and though OPA finds that she was correct in this regard, this allegation is addressed in the context of Allegation #2 rather than here.

Moreover, while the Complainant believed that NE#1 telling her “good luck” regarding determining the identities of the involved officers was dismissive, OPA cannot reach this finding when applying the requisite burden of proof. Indeed, even after completing a full investigation, OPA was unable to determine the identities of the officers that stopped the Complainant’s son. OPA finds it possible that NE#1 was being honest with the Complainant concerning his belief that she would have no luck in this regard, even if that was expressed poorly and/or with a lack of sensitivity. Either way, given the evidence in the record, OPA cannot find that this statement violated policy.



Lastly, the Complainant's contention that NE#1 was sarcastic towards her is similarly difficult to prove given the lack of an audio recording of the discussion. Again, the Complainant may have legitimately perceived NE#1 as being sarcastic even though this may not have been his intention. This does not mean, however, that OPA finds that this did not occur as the Complainant believed. There is simply insufficient evidence to permit OPA to determine that any such sarcasm rose to the level of a policy violation.

For the reasons set forth above, OPA concludes that there is an insufficient basis upon which to find that NE#1 violated the Department's professionalism policy. OPA, accordingly, recommends that this allegation be Not Sustained – Inconclusive. This being said, OPA very much sympathizes with the Complainant and what she experienced, as it certainly resulted in her having a negative perception of SPD, which was unfortunate and avoidable.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #2**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

SPD Policy 5.002-POL-2 requires that SPD "employees will assist any person who wishes to file a complaint." The policy further directs that "employees will assist the complainant by taking the complaint and passing it on to a supervisor and/or OPA." (SPD Policy 5.002-POL-2.)

With regard to the conduct underlying this policy, there is no dispute of fact as to what occurred. NE#1 received an allegation of biased policing from the Complainant, as both the Complainant and the duty officer verified. However, there is no evidence that he completed a Bias Review – even presupposing that one would be have been appropriate under the circumstances – and he did not make an OPA referral. Indeed, OPA only learned of the underlying biased policing claim because the Complainant, herself, was required to initiate a complaint given NE#1's inaction.

For the reasons set forth above and due to the lack of any explanatory information provided by NE#1, OPA finds that he violated Department policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

As this allegation is completely subsumed within Allegation #2, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #4**

***5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing***



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As this allegation is completely subsumed within Allegation #2, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**